

1 |
2 UNITED STATES DISTRICT COURT
3 FOR THE DISTRICT OF RHODE ISLAND

4 EFRAT UNGAR, et al CA NO 00-105 L
5

6 vs.
7

8 THE PALESTINIAN JANUARY 13, 2010
9 LIBERATION ORG. PROVIDENCE, RI
10

11 BEFORE MAGISTRATE JUDGE DAVID L. MARTIN
12

13 APPEARANCES:
14

15 FOR THE JUDGMENT DAVID J. STRACHMAN, ESQ.
16 CREDITORS: 321 S. Main St.
Suite 400
17 Providence, RI 02903
351-7700
18

19 FOR THE DEFENDANTS: RICHARD A. HIBEY, ESQ.
655 Fifteenth St. NW
Suite 900
20 Washington, DC 20005
202-626-5800
21

22 BRIAN HILL, ESQ.

23 FOR THE PLO: DEMING E. SHERMAN, ESQ.
24 Edwards Angell
2800 Financial Plaza
Providence, RI 02903
25 401-274-9200

1
2 JANUARY 13, 2010

3 THE COURT: This is the matter of the estate of
4 Yaron Ungar, et al vs the Palestinian Authority, et al,
5 Civil Action No. 00-105 L. This matter is before the
6 Court this morning on plaintiffs' judgment creditors
7 motion for a payment decree. That's docket number 467
8 in the clerk's file. The attorneys will identify
9 themselves, please.

10 MR. STRACHMAN: Good morning, your Honor. David
11 Strachman for the judgment creditors.

12 MR. SHERMAN: Your Honor, Deming Sherman for the
13 Palestinian Authority.

14 MR. HILL: Brian Hill for the defendants.

15 MR. HIBEY: Good morning, your Honor. Richard
16 Hibey for the defendants.

17 THE COURT: Thank you, Counsel. Mr. Hill, I have
18 your motion for admission pro hac vice and I'm advised
19 that a certificate which was missing previously has been
20 now filed, so I'll be granting that. So YOU will be
21 admitted.

22 MR. HILL: Thank you, your Honor.

23 THE COURT: All right, Mr. Strachman, this is
24 your motion. I'll hear you, sir.

25 MR. STRACHMAN: Good morning, your Honor.

1 THE COURT: Good morning.

2 MR. STRACHMAN: This matter is now verging on the
3 tenth year anniversary of the date our complaint was
4 filed in March of 2002. Judgment entered. As the Court
5 knows, after 289 docket entries, in July of 2005 the
6 Court issued the better part of a dozen decisions
7 between your Honor and Judge Lagueux, with two appeals,
8 a motion to vacate which was denied in the spring, and
9 we now find ourselves, the Ungar orphans and their
10 family, find themselves ten years -- or five and a half
11 years after the judgment without having the judgment
12 satisfied with the PLO and the PA informing us
13 repeatedly that they will not pay the judgment, never
14 coming to this Court telling your Honor in the present
15 pleadings, and the round of pleadings with Judge Lagueux
16 last year, or at anytime in the post judgment period
17 where we've been back to this Court several times in
18 front of Judge Lagueux, never once saying, "we will
19 honor and pay this judgment". As a result of that, my
20 clients have been forced to expend tremendous amounts of
21 sums litigating collection proceedings in several
22 different courts in New York, several different types of
23 proceedings there, state and federal courts, several
24 foreign countries, Connecticut, Washington. We had the
25 judgment debtors fight us over \$11,000 that we

1 identified. We had them litigate for over a year
2 \$180,000, I believe, in Washington. We have had
3 extensive litigation in Israel domesticating our
4 judgment. The judgment debtors even there failing to
5 pay the attorney's fees that were ordered of a quarter
6 of a million dollars. That was over a year ago.

7 We now find ourselves in the unique situation in that
8 as a result of both a stipulation between the parties in
9 Israel and a subsequent ruling by the District Court
10 judge in Israel, there now is over a hundred million
11 dollars that is, as of this month, that is restrained
12 from the Palestinian Authorities' monthly income from
13 the Israeli government. That money is being held by the
14 Israeli treasury. It accrues at a rate of approximately
15 4 and a half million dollars per month. It will
16 continue for the next couple of months, and then will
17 terminate once the judgment amount is -- total judgment
18 is restrained. That money is clearly income. It has
19 been identified by the judgment debtors as their income.
20 It is shown on their books as income. It was as part of
21 funds that are transferred on a monthly basis, a small
22 fraction of the funds that are transferred on a monthly
23 basis from the Government of Israel to the Palestinian
24 Authority to fund their operations.

25 THE COURT: Mr. Strachman, you're saying the

1 4.5 million which is being restrained, withheld, held by
2 the Israeli treasury, is being shown by the Palestinian
3 Authority as income even though they're not receiving
4 it? Did I understand you to say that?

5 MR. STRACHMAN: The totality of the monthly
6 payments is considered their income. They receive a
7 penny on several different factors, but they receive
8 tens of millions of dollars a month as income from the
9 Israeli government. A portion of this 4 and a half
10 million dollars is set aside pursuant to the District
11 Court order in Israel to, as a condition of a stay of
12 enforcing the 2008 ruling of the Court in Israel
13 domesticating the judgment. This is a stream of income,
14 and the 4 and a half million is a subset of that stream
15 of income that they see each month. They catalogue it,
16 they identify it, quantify it, and everyone refers to it
17 as their income on their yearly balance sheets. Whether
18 they're -- how they're accounting for this 4 and a half
19 million that they're not actually realizing or seeing
20 right now is something else, but it's clearly a stream
21 of income that they receive, and it was intended right
22 from the very beginning of the Oslo Accord to help fund
23 their operations. This is a 3 and a half billion dollar
24 a year operation. Their records clearly indicate as
25 much. Their balance sheets are made public, and it is

1 -- in fact, that's what is made public. Whether there
2 are additional sums that are off budget, there are all
3 kinds of issues and allegations with respect to that
4 but, in general, it is clear that they themselves have
5 acknowledged that they have a 3 and a half billion
6 dollar a year budget. This is a tiny fraction of that.

7 The litigation, in the Knox case, is important for
8 this Court to be aware of because in that case, the
9 District Court Judge ordered the same judgment debtors
10 to submit bond in the amount of \$192 million as a
11 condition of vacating the judgment. They then moved and
12 said, "We cannot put up 192". They themselves
13 acknowledged, and this is important, that they could put
14 up \$15 million as a bond. That was a sum that they
15 acknowledged they were able and ready and willing to put
16 up as security. After almost a year of intensive
17 discovery supervised by Magistrate Judge Katz through a
18 series of telephonic hearings from all over the world
19 and with different multiple submissions of evidence,
20 repeated submissions of evidence, I believe Prime
21 Minister Fayyad himself submitted four affidavits, each
22 time documenting more and more of the Palestinian
23 Authority's assets and income, including the transfers
24 between these two defendants. The Palestinian Authority
25 gives the PLO approximately \$7 million a quarter to fund

1 its terrorist operation.

2 Once that was all documented, the Court issued a
3 ruling, Judge Katz issued a ruling, indicating that the
4 Palestinian Authority had the ability to submit bond in
5 the amount of \$120 million, eight times what they
6 proposed to the Court, and obviously a third less than
7 what the Court had originally indicated.

8 And that's very significant because the Court, after
9 making very detailed findings, also indicated that this
10 past September, the first payment toward that \$120
11 million, would be paid. I believe it was September 26th
12 they were obligated to post the first \$20 million, and
13 then \$10 million a month thereafter until the entire
14 \$120 million was reached. Judge Marrero upheld
15 Magistrate Judge Katz's ruling, and that became the law
16 of the case. Shortly thereafter, sometime thereafter,
17 the parties reached an agreement with respect to all the
18 issues pending in that case. But what's significant for
19 us is that two federal judges already ruled that they
20 have the ability to make monthly payments, and they have
21 the ability to put \$20 million as collateral, for a
22 bond, toward the end of September, just a few months
23 ago, and that was after extensive discovery. As I said,
24 it took the better part of a year, hundreds of thousands
25 of documents -- not hundreds of thousands, but thousands

1 of documents were transmitted back and forth with
2 respect to the Palestinian Authority's assets and
3 income, land holdings, multiple affidavits submitted by
4 many people up and down the Palestinian Authority's
5 administration, including their president -- excuse me,
6 their Prime Minister, Mr. Fayyad, who is an economist.

7 So, that shows the background as to where we are
8 right now. We have asked this Court to treat this case
9 like any other collection matter at this stage, and any
10 other collection matter, whether it be in federal court
11 or the Rhode Island District Court, or the Rhode Island
12 Superior Court, a judgment debtor would be hauled in for
13 examination, and would be ordered to show cause why it
14 has not paid this 5 and a half year old judgment.

15 This case, and the posture of this case, is
16 significantly advanced even from that of the
17 standardized, if you will, or the standard type of
18 procedure because we have already identified a source of
19 income that they are not using that can be used to fund
20 the payment of this judgment. We also have an advance
21 ruling by two federal judges --

22 THE COURT: Mr. Strachman, when you say a source
23 of income that can be used, are you referring to the
24 money being held in the Israeli treasury?

25 MR. STRACHMAN: Correct.

1 THE COURT: All right. Please continue.

2 MR. STRACHMAN: So that \$100 million amount of
3 their income, which they have not been able to use for
4 the last several years but is accruing, would allow this
5 judgment debtor very simply to effectively fund the
6 payment of this judgment. So what we have proposed is
7 that the Court order them to make the payment on the
8 judgment and then we would immediately release the hold
9 over the funds in Israel effectively making a cash
10 neutral transaction for them. Because they have hemmed
11 and hawed, and because throughout this litigation we
12 have had to provide solutions, we believe, offered
13 solutions to the Court, to deal with their intransigent
14 and belligerence, what we have suggested is that even if
15 they don't have \$100 million to pay us today and then
16 48 hours later we would release \$100 million from the
17 Israeli funds, for example, that they do so in
18 installments, and we did that as a prophylactic. We did
19 that in order to defeat their contention that they can't
20 make the entire payment. But what we have proposed is
21 that, in our response brief, that they make a \$20
22 million payment, or a payment that the Court deems
23 appropriate, immediately release that same amount of
24 money from the Israeli -- funds that the Israeli
25 treasury is holding, and continue to do that on a serial

1 basis until the judgment is paid. And what that would
2 do is provide virtually no inconvenience to them. It
3 would be completely consistent with the findings of the
4 Knox court, their own references that we've provided in
5 our pleadings to their budget, their income and their
6 assets, and would finally provide a mechanism to have
7 this judgment satisfied and detangled from all these
8 years of litigation.

9 Now, in response, they still don't come to this Court
10 and say we can pay a single penny for this judgment.
11 They have not offered and have not indicated, either in
12 the pleadings here or in the pleadings with Judge
13 Lagueux, that they will pay the judgment, they will
14 honor the judgment. What they have done, and they'll
15 continue to do, is raise two types of argument. One,
16 the world is falling in the Middle East. We heard that
17 for years with Ramsey Clark in this courtroom and in
18 front of Judge Lagueux, and twice the Court of Appeals.
19 The world is falling. They have no assets. They can't
20 respond. This judgment is going to interfere with their
21 operations. It's going to interfere with the funding of
22 the Palestinian Society. Obviously this judgment is
23 against two terrorist organizations, not the Palestinian
24 people, and obviously what we have done is we have
25 proposed effectively a mechanism to have this judgment

1 paid that will have no immediate impact on them at all,
2 none whatsoever. Unlike every other debtor that comes
3 into the district court on a collection case, on a
4 \$2,000 collection case across the street, he has to
5 reach into his pocket and grab \$2,000. This defendant
6 will have to reach into his pocket, grab some money,
7 whatever sum the Court deems appropriate, we've
8 suggested, say \$20 million, and then within 48 hours we
9 would release \$20 million on the Israeli hold, and they
10 will receive that, within 48 hours, absent no
11 ramifications, no effect on their day-to-day
12 operations.

13 Now the second type of argument, and it's detailed,
14 and we've provided details and the cites, obviously in
15 our response brief, are a series of red herring
16 procedural types of arguments about service of process,
17 about the nature of Chapter 9-28, about the rights of a
18 federal court to enforce a judgment of a debtor who does
19 not reside in Rhode Island. We believe each of those
20 procedural arguments are just another red herring,
21 another opportunity for the defendants to do what
22 they've done throughout this litigation, which does not
23 address the merits, does not address what's really
24 before this Court. To say that, for instance, that a
25 debtor who could be in this Court for 289 pleadings, a

1 dozen written decisions and two appeals, 4 and a half
2 years of litigation, wait 5 and a half years after the
3 judgment, file a motion to vacate, never once
4 volunteering to pay this judgment, forcing the Ungar
5 family to go literally all over this world to try to
6 enforce their judgment, and then simply get out of
7 having this Court order them to pay the judgment because
8 maybe they moved across state lines into Attleboro, is
9 preposterous. It's an absurdity. It would make a
10 mockery of the entire proceedings. Judge Lagueux years
11 ago restrained them nationally. He issued a restraining
12 order in May of 2005 from utilizing any bank or
13 financial operation or enterprise in the entire United
14 States. To now say that this Court doesn't have
15 authority to tell them to make a payment toward this
16 judgment just would make a mockery of the entire
17 proceeding. At the same time, come into this Court and
18 never once saying they do have funds and they are
19 willing to comply with the court order.

20 The burden of proof argument they raise is equally
21 absurd. The case they rely on, the Ciccone case, says
22 nothing at all about the burden of proof. It has to do
23 with simply a judgment, a debtor who offered no evidence
24 in his own behalf and simply relied and argued about the
25 evidence that the judgment creditor submitted.

1 The statute 9-28, the Rhode Island rule, Rule 69,
2 which isn't obviously directly applicable in this
3 proceeding, but both of those provisions say very
4 clearly the citation is law, that the Court already
5 issued. It puts the burden on the judgment debtors to
6 explain and to show cause why they haven't paid this
7 judgment. What they have done in the last 5 and a half
8 years to satisfy this judgment. Under their analysis,
9 the issuance of a judgment is no different than any
10 other ruling of the Court. They don't have any
11 obligation to comply with it. They have no obligation
12 to come to this Court in good faith with either a plan,
13 an offer, a proposal. They did none of that. To argue
14 that there are local governments and therefore are
15 immune from an attachment, the Foreign Sovereign
16 Immunities Act says that foreign states are subject to
17 execution. How could an entity like the Palestinian
18 Authority escape the machinations of the state and
19 federal collection proceedings when a foreign state
20 couldn't. It's absurd. This Court heard ad nauseam the
21 three motions to dismiss their allegations about the
22 statehood. No court has ever said they are a state,
23 that they -- no court ever, the United States or in
24 Israel, or anywhere else in the world that I'm aware of,
25 has ever said the Palestinian Authority is a state, yet

1 they seek to invoke rights that even foreign states
2 don't have.

3 So, in sum, I know the Court's familiar with our
4 response brief. I think that these two kinds of
5 arguments suggest that this is just yet another stalling
6 mechanism, a suggestion that this Court now should
7 certify this matter to the Rhode Island Supreme Court
8 and send this there for what could be another year and a
9 half of delay is just -- is almost macabre, it's
10 cynical, and the Court shouldn't entertain that kind of
11 suggestion. The tone of the brief, the tone of the
12 filings, the suggestion that we're here now
13 approximately 200 docket entries after judgment, when
14 Judge Lagueux himself found almost 4 years ago, excuse
15 me, almost 5 years ago, I think it was May of 2005, he
16 found that they were not paying the judgment, that they
17 were transferring assets out of the United States, and
18 we're still no better off than we were from the
19 perspective of having this judgment satisfied, further
20 torturing the Ungars to expend funds and emotional
21 effort and resources to have the judgment enforced and
22 satisfied in other jurisdictions when they have a
23 3 and a half billion dollar judgment and they have the
24 very funds available to satisfy virtually the entirety
25 of this judgment right on hand, that they haven't used,

1 in a restrained account, partially restrained, with
2 their own consent, that was the first order of the
3 district court, would just make a mockery of this
4 proceeding. Thank you, your Honor.

5 THE COURT: Mr. Strachman, you say that the
6 defendants incorrectly cite or rely upon the Ciccone
7 case on the issue of burden of proof, that they suggest
8 it's your burden and you say, in fact, it's their burden
9 to show they do not have the ability to pay the
10 judgment, is that correct?

11 MR. STRACHMAN: Correct.

12 THE COURT: Are you suggesting that at this
13 hearing today they have the burden of demonstrating they
14 do not have the ability to pay the judgment? And if you
15 are, what about the fact that in your memorandum on
16 Page 6 you have the footnote which states, "In light of
17 the nature of the relief sought in this motion, no
18 examination of the PA and the PLO regarding their assets
19 need take place at the January 13, 2010 hearing", and
20 the telephone conference call that I conducted with
21 counsel approximately 2 weeks ago to clarify whether or
22 not the defendants would be required to have someone
23 present for purposes of an examination? So my question
24 to you is that if you take the position that they have
25 the burden of showing that they can't pay the judgment

1 and yet at the same time before the hearing you
2 indicated they didn't need to produce anyone to testify,
3 I see something of a conflict there in the sense that if
4 you're asking the Court to make a finding that they have
5 the ability to pay, or they fail to show at this hearing
6 this morning, that they do not have the ability to pay,
7 how do I reconcile that with what's transpired in terms
8 of what's communicated to them as to what they were
9 obligated to do for this hearing in terms of presenting
10 evidence or testimony? Could you respond to that?

11 MR. STRACHMAN: Certainly. First, Judge, with
12 respect to the burden, the statute says very clearly
13 that the burden is on the judgment debtors. It says
14 they are cited to show cause why they haven't paid, why
15 an order should not enter against them with respect to
16 their income and their assets. They provide no
17 indication that they have not one red cent to pay this
18 judgment. It would be absurd. If they came to court
19 and say we don't have a hundred million but we have
20 \$20 million a month, we have X, they haven't done that.
21 This is a 3 and a half billion dollar budget. We
22 submitted their own budget. We submitted their own
23 affiant's statement. And the facts of their financial
24 circumstances are really not at issue. But they are
25 especially not at issue in this case at this junction is

1 because their own income has been set aside to pay this
2 judgment. So we have a pool of their income that has
3 been set aside, that they have not been able to use,
4 that they have not used, that has not interfered with
5 their operation which is almost at this point
6 surplusage, and they're not coming to this Court and
7 denying that they have this huge 3 and a half billion
8 dollar yearly operation. They're not saying that they
9 don't have their income already set aside by one Judge
10 to pay this very judgment. This is their income. They
11 have over \$100 million in income to pay this judgment
12 which was specifically dedicated to pay this judgment.
13 The only question is that the machinations of their
14 appeal and their recently asked to delay oral argument
15 on their appeal in Israel, which was granted, will take
16 possibly another few more years. So this is a very
17 different case than the typical --

18 THE COURT: Mr. Strachman, are you saying they
19 sought to delay their appeal of the 2008 judgment by the
20 Israeli district court?

21 MR. STRACHMAN: Right. They're scheduled for
22 oral arguments for tomorrow.

23 THE COURT: Before the Supreme Court.

24 MR. STRACHMAN: Before the Supreme Court of
25 Israel, correct. They filed a motion, I think it was --

1 I think it was last Sunday or Monday. They filed a
2 motion requesting that oral argument be delayed until
3 the First Circuit rules on Judge Lagueux's motion for --
4 motion to vacate.

5 THE COURT: When is argument scheduled in the
6 First Circuit?

7 MR. STRACHMAN: It was last week. Last Thursday.

8 THE COURT: And the Israeli Supreme Court granted
9 the motion that they filed to delay the oral arguments
10 on their appeal of the Israeli District Court?

11 MR. STRACHMAN: Correct, correct. And as I
12 understand it, it is ordered to occur approx -- I don't
13 know the exact text of the order but it's my
14 understanding that the order says something like 30 days
15 after the First Circuit ruled oral argument will be
16 rescheduled in Israel.

17 THE COURT: All right.

18 MR. STRACHMAN: So this is a very different
19 situation. This is not a typical judgment debtor who
20 comes in and either the chase is on or, you know, claims
21 an exemption. These funds have already been segregated
22 specifically for this judgment. Some of them, the
23 original attachment of these funds, was with their own
24 consent. We moved for an attachment in Israel while the
25 domestication proceeding was ongoing. The Judge,

1 Judge Farkosh, and I was there, I was in the courtroom,
2 he arranged a consent order between the parties to take
3 a portion of the funds each and every month until the
4 judgment was domesticated, and then he continued that
5 afterwards as a condition of staying enforcement in
6 Israel. So this is a very different situation. In
7 other words, we don't have the funds not identified.
8 And we said very forthrightly right at the beginning we
9 didn't need them to come in here and to testify with
10 respect to their income and assets. What we need to
11 know about their income and assets is not at issue. We
12 submitted their affidavit of Hatam Yousef. He explained
13 what their budget is, and he attaches their budget.
14 We've explained to the Court and showed the Court Judge
15 Farkosh's ruling. So this need not turn into a, you
16 know, a circus as it was in the Knox case.

17 Also, we have the rulings of the Knox case, which was
18 just from several months ago, indicating that as of
19 September 26th they had the ability to post \$20 million
20 as of September 26th, and after a thorough review of all
21 their income and assets, and multiple proceedings, we
22 must have had 6 or 8 telephone conferences, counsel was
23 in Washington, I believe, and overseas sometimes, I was
24 in Rhode Island, the Judge was in New York, and we had
25 multiple conferences about this discovery, about the

1 information that they would need to submit so that we
2 could determine whether their representation that they
3 could submit a bond for \$15 million, or the 192. We
4 also have their own offer, they offered in Knox, and
5 they said, "We have the ability to present a bond of \$15
6 million". So we have a series of representations that's
7 not really at issue.

8 THE COURT: Well, it sounds to me, Mr. Strachman,
9 that you're asking me to either infer or find that
10 because they had at the time of the Knox case the
11 ability to say, "We can post the \$20 million bond", that
12 they still have that ability, it sounds to me that
13 that's your argument. And, I mean, you indicate there's
14 been a settlement in the Knox case, and you didn't --
15 perhaps it's not known what the nature of the settlement
16 is, but, I mean, is it not possible that the \$20 million
17 which was available to be posted which they said, "We
18 could post as a bond in the Knox case", has since been
19 utilized for other purposes, potentially the settlement
20 of the Knox case and therefore the \$20 million that was
21 available at the time they made that statement or
22 representation is no longer available? So how can I
23 take the fact that a few months ago they said they could
24 post \$20 million to make a finding now they have the
25 ability to pay \$20 million?

1 MR. STRACHMAN: They never said they could post
2 \$20 million. It was two federal judges who said on
3 September 26th they would have \$20 million, and in
4 October 26th they would have another \$10 million to post
5 for the bond, and each and every month. That issue has
6 already been litigated, and that was in the context,
7 because it was obviously the Knox case, and not this
8 case, it was with full recognition that some of their
9 tax money had been segregated for the Ungars. Here, all
10 we're saying is this case is even better than Knox
11 because now we're taking, effectively, we're suggesting,
12 pay 20, you're going to get 20. There's no way out of
13 that. There's no way they could come to this Court with
14 honesty and say "We don't have that ability", because
15 with the 3 and a half billion dollar a year budget,
16 there's all of the payments to prisoners, terrorists who
17 are sitting in Israeli prisons, all the other payments
18 that they're making each month, the monthly influx of
19 between 250 and 300 million, that's from their own
20 affiant, per month, in Israeli shekels, approximately 4
21 and a half shekels per dollar, they have no way out of,
22 I think, a finding, and that's why we suggest we don't
23 need to do fact-finding and turn this into a whole
24 circus again and run another year of discovery because
25 we have the Knox case but only far better, much better,

1 because these funds are right there and segregated. And
2 at the same time, the issue at some level in a citation
3 proceeding is not whether they have the ability to pay
4 the entire judgment right this second, but what can they
5 pay right now. They would have the Court believe they
6 don't have to do anything. They don't come with any
7 suggestion as to how to pay this 5 and a half year old
8 judgment, and I suggest that in light of their own
9 affiant's statements, that's bad faith. This is not an
10 enterprise with no funds. They have 3 and a half
11 billion dollars a year. They don't want to pay this
12 judgment. They have told me personally, three separate
13 lawyers have told me they will never pay this judgment,
14 and they have attempted to stall the proceedings in
15 Israel. They've attempted to stall the proceedings in
16 other jurisdictions with their partners, with business
17 partners, their fronts. Judge Lagueux, several years
18 ago, ordered their, we call it their Christmas fund
19 account, the Palestine Investment Fund, transferred over
20 to us. They refused to comply with that. They refused
21 to -- in fact, it's worse than that. With counsel
22 present, with counsel in the courtroom, they refused to
23 even respond to Judge Lagueux's order that they respond
24 to a creditor's bill, asking that the Palestine
25 Investment Fund be transferred to us, and then we find

1 that the Ungars were sued several times by the Palestine
2 Investment Fund and others, and the Palestinian Monetary
3 Authority, and other entities that they're associated
4 with, and their sort of sub-entities, if you will. We
5 find ourselves defending suits and being sued. They
6 worked with their investment outfit in Connecticut to
7 work a stay, and the district court in Connecticut said
8 we're going to -- it would grant a stay on the
9 collection proceedings in Connecticut. We appealed
10 that, and the Second Circuit said that it would continue
11 the stay until all appeals are resolved.

12 So not only are they acting to further avoid this
13 judgment, and sort of playing dead, they're working
14 aggressively to undermine the judgment. I've written
15 repeated letters to counsel, when will this judgment be
16 paid. We provided some of those letters to the Court.
17 When will this judgment be paid? No response. Not a
18 single response, and there is no response, and you will
19 have no response today. No one will step up to this
20 podium and say, "We can't pay a hundred million today
21 but here's what we can do, here's the schedule". They
22 won't do it. The Court has no other, I think,
23 legitimate position, which is to order them to pay
24 especially when we have gone out of our way to come up
25 with, as we did for the first 4 and a half years of

1 litigation, to help them out of their own problems, and
2 here we proposed a solution to the Court which is
3 revenue neutral, which at one level, a rational observer
4 might say this is the perfect way for them to get out of
5 it, release these funds that they haven't used for
6 several years, pay the judgment, we're on our way. I
7 hope I've answered your Honor's question.

8 THE COURT: You have, Mr. Strachman.
9 Mr. Strachman, ballpark, how much have the plaintiffs
10 recovered of the judgment at this point? Anything?

11 MR. STRACHMAN: It's approximately \$5 million.

12 THE COURT: That you've recovered so far?

13 MR. STRACHMAN: That we've recovered, right.
14 Again, just to be clear, it's not funds that were given
15 to us. We had to go throughout the country, and the
16 defendants actively -- \$11,000 they were fighting us.
17 They fought us for \$180,000 in Washington for two years.
18 So, 18 months, I forget exactly. Several years ago. So
19 we have recovered a small portion. That's less than the
20 interest that has accrued on the judgment in 5 and a
21 half years, and certainly with the interest and with our
22 enormous collection costs, does not make a dent at all
23 into the judgment.

24 THE COURT: All right. Thank you, Mr. Strachman.

25 MR. STRACHMAN: Thank you.

1 THE COURT: Excuse me, counsel. (Pause)

2 Thank you, Mr. Hibey. You may proceed.

3 MR. HIBEY: Hibey, yes.

4 THE COURT: Hibey, thank you.

5 MR. HIBEY: Thank you, your Honor. Good morning.

6 THE COURT: Good morning.

7 MR. HIBEY: Your Honor, I think that I'd like to
8 begin my remarks by addressing the recitation of
9 Mr. Strachman regarding the procedural history of the
10 case because in our view much of what we heard today was
11 either missing or utterly revisionist in its
12 characterization of what has been going on in this
13 litigation.

14 He began by saying that the motion to vacate under
15 Rule 60, which was argued by my colleague before Judge
16 Lagueux, was denied this spring, past spring, and that
17 that becomes the point of departure for many of the
18 statements that he speaks to regarding the procedural
19 posture of the case.

20 The procedural posture of the case is informed
21 further by recent developments. I'm not sure whether
22 the Court is aware of them. These recent developments,
23 in the Ungar case, the support in our view, the
24 prematurity of this, and argue against stampeding this
25 Court into any consideration of the issue of -- painted

1 as put before the Court in Mr. Strachman's papers.

2 This case was domesticated in Israel where that money
3 that he was referring to was attached by order of the
4 Court, and the judgment of, enforcement of the judgment
5 here was recognized, but it was stayed. The Israeli
6 court stayed the enforceability of the judgment, imposed
7 the condition that the attachment should continue to
8 accrue but not be distributed, hence this accumulation
9 of funds. The attorney general of Israel is suppose to
10 give an opinion to the Supreme Court regarding the legal
11 issues of the enforceability of the Ungar judgment, and
12 the attachability of that, and it will address, we're
13 told, if they (inaudible) to issue an opinion, their own
14 concern about this money not being available because it
15 is money that derives from the arsenal of the courts
16 themselves.

17 Now, indeed, the Supreme Court of Israel was to take
18 hearing on these issues with both the plaintiffs and the
19 defendants present and making argument, but also the
20 Office of the Attorney General of the Government of
21 Israel, which the Court had invited to provide its input
22 into this complicated problem. Instead, the Supreme
23 Court hearing and the position of the attorney general,
24 which was due January 14th, tomorrow, was postponed for
25 -- until September 1, 2010 and afterwards, according to

1 the translation of this resolution that the court
2 registrar signed under the egis of the Supreme Court in
3 Jerusalem.

4 Now, the information with respect to who made the
5 motion, I will tell you is based upon the information I
6 received. It was not my understanding that that request
7 to put off the argument was made by the defendants, but
8 I cannot stand here before you and tell you that the
9 papers aren't constructed that way. My understanding
10 was that the Office of the Attorney General prevailed
11 upon the parties, and all parties consented to the
12 continuation of the appeal process in Israel that would
13 address the very question of the enforceability of the
14 Ungar Rhode Island judgment here and the attachability
15 of the funds over there.

16 My understanding further is, it is because of one
17 very significant development that Mr. Strachman has
18 failed to tell you about here, and that is that last
19 Thursday the appeal of the denial of the Rule 60 motion,
20 which was filed on behalf of the Palestinian Authority
21 and the PLO was heard in the First Circuit by Justice
22 Souter, Judge Lippez, and Judge Selya, in an argument,
23 which Mr. Strachman represented and advocated on behalf
24 of his clients. My understanding is that Israel is
25 waiting for the First Circuit to decide this case. I

1 respectfully suggest that you should wait until the
2 First Circuit has decided this case. I suggest further,
3 respectfully, that perhaps you would wish to hear the
4 argument as it is taped, apparently, and available on
5 the First Circuit web site for the proposition, your
6 Honor, that this is an important issue whether there
7 will be a vacatur of the very judgment that you're being
8 asked to address today.

9 I have, since I am not experienced in this district
10 or this circuit, I don't have a good idea as to when the
11 opinion in that case will issue, and I think that the
12 Israelis feel the same way and that's why they put the
13 thing off until September, thinking that between now and
14 then they might expect a ruling. And the order that was
15 signed here by the registrar of the Israeli court
16 provides for perhaps the matter being put off even
17 further in aid of receiving the developments that are of
18 interest to the parties.

19 Now, therefore, that would be the first thing I would
20 like to tell you with respect to what I consider a, at
21 this moment in time, in the history of the case, when
22 the appellate courts in two jurisdictions are grappling
23 with these problems we are stampeded in here before you
24 in dubious procedural circumstances to address the
25 request that shifted from what it was on the original

1 motion to what it became in the reply after our
2 opposition.

3 The motion originally filed here before you seeks
4 payment, in full, in the amount of \$116 million, plus
5 interest. We opposed. Now they come in and argue about
6 an installment plan that they had devised with their,
7 the plaintiffs' releasing money from the (inaudible) vat
8 attachment upon each payment. I don't even believe it's
9 clear that that is something that they are capable of
10 doing, but I'm not going to go further into it. I just
11 want to note that what we were hailed into court for
12 originally changed when we got here.

13 Indeed, your questions to Mr. Strachman are most
14 appropriate.

15 THE COURT: Mr. Hibey?

16 MR. HIBEY: Please.

17 THE COURT: I understand your point that between
18 what the motion, originally requested and the relief
19 that was expressed in the reply memorandum differs, but
20 the -- well, I'm going to withdraw my question. You
21 proceed.

22 MR. HIBEY: Fine. Now, I think the questions
23 that you put to Mr. Strachman were appropriate ones as
24 to what is the status of the ability of the judgment
25 debtor to honor the judgment, and as far as I'm

1 concerned, those answers are wanting in many different
2 regards. I'd like to now focus on those reasons. There
3 has to come a time in this case, and in this particular
4 proceeding, when we have to understand what the legal
5 basis is for this proceeding at all, and my
6 understanding of the law in that regard is that
7 notwithstanding that we are in a federal court, the
8 federal court is being asked to apply the law of the
9 State of Rhode Island and, therefore, to apply whatever
10 statutes are appropriate to the issues before it.

11 This case is brought under 9-28-3 which is the
12 citation proceeding, and the citation proceeding is
13 administered, if you will, through a series of statutes
14 that run from 9-28-3 to 9-28-7. We respectfully suggest
15 that the Collins case, which is a Rhode Island state
16 case, is an important precedent that should govern your
17 consideration here, a case which we cited in our
18 opposition, but which was not responded to in the reply.
19 In that case, six months before suit was filed, a man
20 named Collins transferred title to his home to a
21 corporation in which he was the sole shareholder. And a
22 case was brought under 9-28-3 seeking a, on citation, a
23 payment decree. The Court, the highest court of Rhode
24 Island, held that the sole source for the payment of
25 judgment would be the debtor's income, not his assets.

1 And so when the lower court ordered that the title to
2 the property be recovered, the high court of Rhode
3 Island said you can't do that because that is not
4 possible or available to you under 9-28-3. That is
5 distinguished from 9-28-1 in which a creditor files a
6 civil action, obtains a creditor's bill, and has the
7 right to seek, if you will, assets within the
8 jurisdiction of Rhode Island to satisfy the judgment.
9 You cannot go after any assets or anything outside the
10 State of Rhode Island.

11 Now the characteristics of 9-28-3 which were brought
12 here, which is the action brought here, undeniably raise
13 the question of whether 9-28-3 is appropriate against
14 anyone other than an individual, a person, not a non
15 person entity. The language of 9-28-3 speaks to a show
16 cause why an examination of the debtor's, his or her
17 circumstances, his or her circumstances, should not be
18 made. A decree ordering him to, or her, to pay the
19 judgment, delivering a copy to the debtor, or by leaving
20 it at his last place of abode, this is not the language
21 of a statute that is designed to apply to a non person
22 entity.

23 THE COURT: Such as a corporation.

24 MR. HIBEY: Such as a corporation. Indeed,
25 corporations are not covered by 9-28, 1 thru 7. You

1 need to go to 9-26, Section 25 and following, to examine
2 the provisions of Rhode Island creditors law, as it
3 applies to the levy and execution on a corporation in
4 satisfaction of its adjudicated debts.

5 So, in the first instance, therefore, we don't think
6 9-28-3 applies to our clients.

7 Secondly, Mr. Strachman has, in his usual fashion,
8 used cavalierly words to strengthen his position. One
9 comes immediately to mind that in the same breath he
10 speaks to the PLO as a terrorist operation. You should
11 know that notwithstanding the media's demonization of
12 the PLO, the United States government executive branch
13 has never designated the PLO as a foreign terrorist
14 organization. But in this immediate instance, his
15 question under 9-28-4 when he talks about -- where the
16 statute talks about the recovery of income from any
17 source, and basically what he's attempting to do there
18 is extra territorialize a recovery device that we
19 respectfully believe under 9-28-3 is limited to the
20 borders of this state. When it says you can recover
21 from any source, by itself, does not make a case for
22 tracking the money that is not in Rhode Island.

23 We received these papers --

24 THE COURT: You're arguing, Mr. Hibey, that if a
25 -- let's take a hypothetical case, we have a resident of

1 Rhode Island against whom there is a monetary judgment,
2 and he has funds on deposit in a bank in California, and
3 that bank in California has no branches here in Rhode
4 Island, that those funds are not reachable, is that
5 correct?

6 MR. HIBEY: That's right. Yes.

7 THE COURT: All right.

8 MR. HIBEY: What you do is you domesticate your
9 judgment here and you take it to California and you get
10 the money there, and that's what they've been doing, or
11 attempting to do in other collection and turnover
12 actions against various entities that they claim are
13 alter egos of the Palestinian Authority. So it's not as
14 though they're without remedy. It is that the remedy
15 they're seeking is utterly misplaced here. And the idea
16 that under 28-4 inquiry can be made by examination of
17 the debtor as to his or her circumstances or her income
18 from any source. They take the word "any" and attempt
19 to extraterritorialize it. I just made that word up, I
20 think, but what I'm trying to say is, they're trying to
21 take any and apply it, shall we say, grossly, beyond the
22 recognized limits of the state. I'd like to identify
23 for you a case called Small vs the United States. These
24 days I have so many cites, 544 US 385, 2005; US Lexis
25 3700. It's a case in the Supreme Court decided in 2005.

1 THE COURT: The first name was Small, S-M-A-L-L,
2 Small vs United States?

3 MR. HIBEY: Yes, your Honor. I have copies of
4 that.

5 THE COURT: All right. After the hearing you can
6 give it to my clerk. Thank you.

7 MR. HIBEY: There was the question of the
8 applicability of a statute that made reference to a
9 certain consequence flowing to a person who was
10 convicted under the statute, "convicted in any court."
11 Justice Breyer, speaking for the majority, wrote at
12 considerable length about the word "any", and concluded
13 that the Congress ordinarily intended statutes to have
14 domestic not extraterritorial application, and found
15 that the word "any" could have such elasticity to it as
16 to swallow up everything when that certainly cannot be
17 the intention of the framers of the language. So the
18 word "any" considered alone cannot answer the question
19 of whether it includes a foreign court when you talk
20 about a conviction in any court. And we think that
21 that's an important factor here, that the statute that's
22 being cited, or relied upon for the very predicate of
23 this proceeding, when it speaks to income from any
24 source, cannot and should not, within the scheme of the
25 entire statutory framework, mean any, anywhere in the

1 world. It was interesting to me as Mr. Strachman
2 recited the injunction that Judge Lagueux entered with
3 respect to the movement of Palestinian Authority and PLO
4 assets. He'd never attempted to restrict that beyond
5 the federal jurisdiction of the United States. I should
6 think that it is not a stretch at all, especially after
7 you read Justice Breyer in the Small case to suggest
8 that any income, assuming for the moment that the VAT
9 money is income and I don't agree to that at all, that
10 any income includes income outside of the state.

11 Now, let me go on. I would suggest to the Court that
12 the points I have made with respect to 9-28-3 and 4 run
13 all the way through to 7, and if the Court wishes to
14 have further explication on that, I'm happy to provide
15 it. But I think in the end, it is that 9-28-3 applies
16 to a natural person, that the extraterritorial reach of
17 it does not go to outside the United States, and that
18 the reliance on other cases in other jurisdictions does
19 not inform the question. Now what they do in New York
20 and how they do it there has no applicability to the
21 question of how this statute works here. A statute, the
22 section of which they're relying on, goes well beyond
23 where it should.

24 Now, I don't know what we accomplish here today,
25 respectfully, beyond what I have discussed with you

1 because, like you, we were told in no uncertain terms
2 both in writing and orally that there would be no
3 discussion about the ability of the Palestinian
4 Authority to be able to pay toward any judgment of the
5 sort that is before in the Rhode Island litigation. So
6 I'm not totally prepared because I wasn't required to
7 come in and produce evidence for you. But I think it's
8 very important for me to clear the air about a few
9 things.

10 Mr. Strachman calls this a 3 and a half billion
11 dollar operation. Unless there's a piece of paper in
12 front of me, I'm not prepared to subscribe specifically
13 to any set of numbers. I think all of that must be very
14 precise, and I didn't come into court today with those
15 kinds of numbers. But what I can tell you is that
16 whatever the number is that he would use to characterize
17 the governmental operation of the Palestinian Authority,
18 you must understand that it is a deficit operation. Its
19 obligations to the people of Palestine and to its
20 creditors vastly exceeds whatever income they enjoy, and
21 I will use that word income because that's good parlance
22 here, but understand that the sources of their receipt
23 of money, are through donor countries and through the
24 VAT, and when he says that somehow the VAT can be tapped
25 for the payment of a bond, therefore the VAT can be

1 available for other uses connected with the litigation,
2 or that the VAT is holding upwards to a hundred and \$2
3 million in U.S. equivalent under an order of attachment,
4 that, you know, doesn't even begin to explain what the
5 consequences are of any kind of holdback of any amount
6 of funds respecting the lives of several million
7 Palestinian people living in Palestine. And so I don't
8 think it's a very easy -- I think it's too easy and too
9 fascial to suggest that because he characterizes it as a
10 \$3 billion operation, and they haven't had the use of
11 these funds because they've been frozen, that they're
12 fresh enough to do anything. The issues are far more
13 complicated than that, and they have not been developed
14 as of this time before this Court, because we were not
15 required to, and the idea that you have found at another
16 point in time to be able to put up a bond translates
17 into the idea that someone found we can put up \$120
18 million is fanciful. As you well know, bonds are put up
19 in different ways that do not involve a dollar for
20 dollar posting of the funds if there is a surety or
21 other guarantor available. I can't tell you there is or
22 isn't. We did not have to broach that subject because
23 the Knox case was disposed of before any of that had to
24 happen.

25 THE COURT: But did the Knox court make a finding

1 that the Palestinian Authorities had the ability to make
2 payments of \$10,000 a month?

3 MR. HIBEY: No. The order for the bond was \$120
4 million payable \$20 million in a first (inaudible) tranche
5 and then \$5 million a month for 20 months, so it would
6 be 20 plus a hundred, with the hundred over 5.

7 THE COURT: Did the Court make a finding that the
8 Palestinian Authority had the ability to make a payment
9 of \$5 million a month?

10 MR. HIBEY: Yes, he made a finding that that's
11 the order he would make, and that is what the Magistrate
12 Judge did. That issue was contested.

13 THE COURT: And determined unfavorably to the
14 Palestinian Authority.

15 MR. HIBEY: Well, that's my -- my recollection
16 obviously, because it's just not refreshed well enough
17 right now, I can't recall whether precisely Judge
18 Lagueux ruled on our Rule 72 objection to that finding,
19 and the only reason why I'm having trouble with that is
20 because it was in that same time frame that Knox was
21 disposed of, but if indeed Mr. Strachman has a document
22 that says that the matter actually was ruled upon by
23 Judge Marrero, I would not be surprised, but I just
24 don't have that recollection. I don't think it makes a
25 difference because there's a difference between putting

1 up a bond and having a surety assist in that regard, a
2 bond that can come back to you in the event the
3 conditions associated with the bond are met, and I
4 cannot remember whether it was performance and don't
5 default again or whether it was money that would be
6 there to secure a recovery in the event at trial we lost
7 the case. I don't remember. But it's very different
8 from what we're hearing here where it started with \$116
9 million payment in full. An astonishing proposition
10 when you know but don't tell that in fact the case is on
11 appeal. The case has been argued. There's a tape of
12 the argument. The matter has been put off in Israel
13 where in the end not only does the judicial branch have
14 to decide whether the judgment here is enforceable and
15 attachable but the executive branch of the Israeli
16 government must also be in agreement with respect to
17 that. The idea that somehow that doesn't have an impact
18 on my clients is fanciful. One need only look at
19 letters which have been written to the District Courts
20 in two cases, one most recently where vacatur under Rule
21 55 was granted, but the United States Government has
22 stated to the District Court that while it is not going
23 to articulate a suggestion of interest per se, nothing
24 is to be inferred from that as evidence that they have
25 no interest in what's going on in these cases, but then

1 they go on to say, importantly, that they are concerned
2 about the financial and political viability of the
3 Palestinian Authority as a result of these cases and the
4 specter of a judgment being finalized and imposed upon
5 them. So this is very momentous and consequential
6 business that we're about in these various cases.

7 So in the end, your Honor, we're here under the wrong
8 statute. The predicate for being here at all must be
9 understood in the context of these very recent
10 developments. We're being told that we don't have to
11 come in here and put up any kind of case today in front
12 of you. So it begs the question, what is this all
13 about? Well, it seems -- this is pure advocacy and I'll
14 keep it short because that's what it is, this is a
15 motion to scandalize us. This is a motion to influence
16 a court in Israel that somehow a Judge in Rhode Island
17 has most recently said that which has been the case all
18 along, that we have an obligation under a judgment, and
19 that this is still another occasion where we can get up
20 and resist. Well, we are engaged fully in the process
21 of litigating our rights as provided for by law, and
22 we're not ashamed of that. There came a time in January
23 of 2007 when the Secretary of State responded to
24 President Abbas who had earlier asked for some kind of
25 assistance in connection with the cases. Ten lawsuits

1 against the Palestinian Authority in the United States
2 by Israelis who happened to be American citizens. And
3 the Secretary of State wrote back and said you should
4 engage in these cases. You should not sit back and just
5 let them unfold and continue without participation on
6 your part. The Palestinian Authority took that advice
7 to heart. We were retained. We've been trying ever
8 since to advance our legal positions in various courts
9 where these cases are pending. We have had three
10 vacatur that have been granted conditionally. We have
11 on appeal the denial of this judgment, and imminently
12 we're going to be getting a ruling. The Israeli court
13 system is anticipating that ruling, and the parties over
14 there, including Mr. Strachman's clients, have consented
15 to the matter being put off. There are many procedural
16 defects in what is before you.

17 THE COURT: Mr. Hibey, if the First Circuit rules
18 in your favor?

19 MR. HIBEY: Yes.

20 THE COURT: Does that put this case in the
21 posture equivalent to the Knox case?

22 MR. HIBEY: It depends on what they say. They
23 could remand it, merely remand, or they could vacate it
24 and take a decision up there, or they could affirm it
25 outright. So those, I think, are the possibilities that

1 we're dealing with, and that's the sense of what I
2 witnessed when listening to the arguments last Thursday.
3 So those are the possibilities.

4 THE COURT: Well, in the Knox case, as I recall,
5 the judgment had been vacated but the defendants were
6 required to post a bond.

7 MR. HIBEY: Right.

8 THE COURT: And the issue was how much that bond
9 was going to be.

10 MR. HIBEY: That's right.

11 THE COURT: And my question to you is, that if
12 you are successful on your appeal to the First Circuit
13 --

14 MR. HIBEY: Yes.

15 THE COURT: -- and the judgment is vacated, does
16 it seem likely to you that the issues that were
17 addressed in the Knox case will then be before this
18 Court?

19 MR. HIBEY: Yes, only because at one point in the
20 oral argument, my recollection is we were asked whether
21 a bond might be imposed as a condition of vacatur, and
22 we answered that question in the affirmative, yes. I
23 don't purport to project as to what they're going to do.
24 That's why I encouraged you to listen to the argument
25 and make up your own mind if there's anything to be

1 derived from listening to an argument. So I don't want
2 to indulge in any speculation other than to say what the
3 possibilities are, not what the likelihood is going to
4 be.

5 THE COURT: I guess my point, Mr. Hibey, was that
6 you are saying that it's premature for this Court to
7 act, that this Court should wait until the First Circuit
8 decides the pending appeal, and I'm saying, all right,
9 let's assume that the First Circuit rules in your favor,
10 doesn't that get us to the situation in the Knox case
11 which --

12 MR. HIBEY: I don't know. It depends on what
13 they set for a bond. I can recall, also, that Justice
14 Souter posed a series of questions that might have been
15 joined in by Judge Selya, I can't be certain about that,
16 about the amount of the judgment, and the consequence
17 associated with a judgment of that size. And I know
18 that the questions were asked and that in one of those
19 questions, the \$116 million was recognized to be a large
20 sum of money. I want to be careful with the adjectives
21 because I might import some of my own sense of that into
22 it, but that's what was said. We argued, and I should
23 argue here, by the way, that we're confronted with this
24 horrific irony that we're being found liable for the
25 acts of Hamas. In the real politic of the region,

1 anybody who reads any newspaper, even newspapers here in
2 the United States, recognize that Hamas and the
3 Palestinian Authority have been at complete conflict
4 with each other. Hamas was thrown out of the
5 Palestinian Authority government structure. Hamas
6 retreated to Gaza. Hamas engaged in the takeover of
7 Gaza, resulting in the deaths of many Palestinians who
8 supported the Palestinian Authority. Hamas is roundly
9 blamed for much of the violence that emanated from Gaza,
10 and yet we're here having to pay, or being called upon
11 to pay for the acts of Hamas. This was when there were
12 questions about the bond. There was a response that
13 attempted to capture a bit of this horrific irony
14 associated with us having to perhaps be required to
15 honor a \$116 million judgment for the conduct of Hamas.

16 As you can see, we have an argument for a meritorious
17 defense. That's part of trying to get the judgment set
18 aside. Our argument in the Court of Appeals was the
19 Judge didn't consider it. He focused, just as
20 Mr. Strachman does here because it's such an easy thing
21 to do, on the willfulness of the default during the time
22 when our predecessor counsel were present in the
23 courthouse. That's the situation. So there are many
24 moving parts in this thing, all of which could easily be
25 impacted -- strike easily -- will be impacted by a

1 decision from the Court of Appeals. Certainly Israelis
2 understand it. And the others over there, with their
3 lawyers over there, who are in league with this man,
4 Mr. Strachman, appear to appreciate those circumstances
5 because they consented to this motion.

6 So, respectfully, your Honor, especially in a
7 proceeding when we're being called in here and told we
8 don't have to put on any witnesses, do anything but
9 simply play off some kind of record that's not really
10 before you, that we should be doing business here today.
11 I respectfully suggest that that is not a prudent action
12 to take, and that any action predicated on the legal
13 propositions that were advanced here by the plaintiffs
14 are flawed.

15 Rhode Island law is not well-developed as this kind
16 of creditors rights law is in other jurisdictions that
17 have other statutes and other legislative regimes. We
18 really think that there's great uncertainty about the
19 applicability of these statutes if they don't hit you
20 the same way they hit us at the outset, that they don't
21 really apply to a non-person entity. And so in our
22 papers we suggested you might have to certify if you
23 wanted to really understand what was going on with these
24 statutes. But I think all of that suggests a great deal
25 of activity, which we believe is appropriate here, that

1 all of it could be put off until such time as the First
2 Circuit brings some clarity to the picture. That's what
3 we're asking for, no action be taken today.

4 If your Honor has any questions, I'd be happy to
5 answer them. I'm grateful for the time you've given me.

6 THE COURT: I have no questions, Mr. Hibey.
7 Thank you.

8 MR. HIBEY: Thank you, your Honor.

9 MR. STRACHMAN: If I may respond?

10 THE COURT: Yes, Mr. Strachman. I would be
11 interested in hearing your response on the Collins case,
12 and the argument that the statute 9-28-3 under which
13 this action has come before the Court, the defendants
14 argue the Supreme Court has said you can't get the
15 relief you're seeking under that statute. Would you
16 address that part of their argument?

17 MR. STRACHMAN: Certainly, your Honor. The
18 Collins case, as I recall, references income. This is
19 income. This is a stream of income that flows to the
20 Palestinians. It does not ask this Court to transfer a
21 piece of real estate, as the Supreme Court authorized in
22 the Desper case where it authorized a Massachusetts
23 property to be transferred, et cetera. This is income.
24 This is a red herring to suggest that maybe it is
25 income. It's described all over as income. Income is

1 cash that you get each month. That's what this is as
2 opposed to an asset.

3 THE COURT: What about the contention that 9-28-3
4 has no applicability to anyone other than a natural
5 person given the references in the statute to his and
6 her income, his or her ability to pay?

7 MR. STACHMAN: Well, there's no case that's ever
8 held that, and although the statute is what it is in
9 terms of the language that it uses, there's no case that
10 I'm aware of that has ever held that it does not apply
11 to corporations, number 1. Number 2, I know that each
12 and every day in the district court and the superior
13 courts of Rhode Island, corporations are hauled into
14 court every day. I've seen the citations to
15 corporations. I'm aware of it being done. I've seen
16 them being called, you know, called on the calendar, to
17 be sure a witness may have to come in to answer
18 questions on behalf of a corporation, but a judgment
19 debtor, that is a corporation, is brought into the
20 supplementary proceedings all the time, and I have never
21 seen anywhere other than in this brief a suggestion that
22 corporations cannot. I think it is crystal clear in
23 terms of the practices of the Judges of Rhode Island and
24 the case law.

25 I'd also like to address, if I could, something. I

1 did misspeak. In our brief we indicated that in Knox
2 the Court ordered a \$5 million a month monthly payment.
3 I think I said \$10 million. After the first payment was
4 to be made in September of 20 million each month
5 thereafter it would be they were ordered to pay 5
6 million. I believe that I said 10 million.

7 To start off an argument, and to come close to the
8 end and say that this proceeding is some sort of a
9 stampede, 5 and a half years after judgment, after my
10 clients have been sued for enforcing this judgment by
11 the Palestinian Authority cohorts and business partners
12 and some entities, when they still, as I predicted after
13 a half hour presentation made no indication at all that
14 they would honor this judgment, that they were coming to
15 this court with clean hands, and would respect this
16 court, and all the work that the Court put into this
17 case over 4 and a half years, and several years of post
18 judgment proceedings, is shocking. This isn't a
19 stampede. This isn't day 1. Judge Lagueux made a
20 finding that they were transferring assets and they were
21 not honoring the judgments. That was four years ago.
22 They failed to contest the fact that they have not
23 complied with the creditor's bill that was granted by
24 Judge Lagueux, approximately three years ago. Had it
25 been complied with, had they complied, as I suggested,

1 the judgment would have been satisfied. They don't
2 contest that they have fought us to collect this
3 judgment in Washington, New York, elsewhere, fought us
4 in Israel. To suggest this is a stampede is really
5 disingenuous.

6 In terms of the proceedings at the First Circuit, yet
7 another red herring introduced for the first time here,
8 and it's particularly problematic because Rule 60 says
9 very clearly, the filing of a motion to vacate does not
10 stay the enforcement of the judgment. They have
11 directly never come to this Court, sought a stay of the
12 enforcement of the judgment. They did not at the Court
13 of Appeals. Mr. Hibey said three times today, orally,
14 that he was requesting the Court to orally stay this
15 proceeding and stay the enforcement of this judgment
16 because he knows that he can't get it under Rule 60. No
17 cases that I'm aware of say that once a Rule 60 motion
18 is denied a then appellant judgment debtor can obtain a
19 stay. And even more egregious is that 5 and a half
20 years ago when this Court entered final judgment, they
21 asked for a stay, and Judge Lagueux said you can have a
22 stay if you place, submit a bond in the amount of
23 \$50 million. They said they can get it right at the
24 beginning, on appeal, before the First Circuit upheld
25 Judge Lagueux's entry of judgment. And, of course, they

1 did not submit the bond, and never obtained a stay. So
2 to come now orally through the back door and to try to
3 wrangle a stay, when they certainly don't want to come
4 through the front door, and they don't want to file a
5 motion, and they've never filed a motion directly for a
6 stay, should be denied and should be seen as yet another
7 attempt to delay and obfuscate.

8 The difference in the suggestions that were made in
9 our reply brief and our initial brief are only a matter
10 of magnitude, not of kind. We have suggested remedies,
11 suggested ways out of the situation. We have not
12 changed the nature of the motion, as Mr. Hibey would
13 suggest. We have simply said there's a couple of
14 different ways to do it and here are some other ways, to
15 do effectively the same thing, which is order payment
16 toward this judgment.

17 Mr. Hibey made much of out of Rhode Island or the
18 territorialization, I believe, in his word of the
19 statute and this judgment. In light of the jurisdiction
20 of federal courts, in light of the plethora of cases
21 that we submitted from many different jurisdictions,
22 showing that courts all the time do exactly what we've
23 asked this Court to do, is also shocking. How could a
24 court that hears diversity cases enter judgments but
25 never have control over, in personam over the

1 defendant's post-judgment? The suggestion that there's
2 some sort of in rem remedy here is completely missing
3 the mark. This Court found repeatedly it has
4 jurisdiction over the defendants. That jurisdiction
5 continues. The defendants have appeared repeatedly
6 post-judgment. They have filed enough pleadings that we
7 are now in the mid four hundreds of docket entries over
8 the last 5 and a half years. They have sought relief
9 from this Court, and to suggest that the Court can't
10 tell them what to do in terms of satisfying this
11 judgment, is not only outrageous but it's just a
12 continuation of the posture that they commenced right
13 from the very first pleading signed in July of 2000.

14 They've suggested that we're seeking some sort of
15 alter ego theory against the defendants in other cases.
16 It's not true. We never once used the word alter ego
17 theory. They come to this Court with very extreme type
18 of claims, these extreme type of arguments that would
19 nullify the ability of this Court to effectively render
20 judgments of people who just work across state lines,
21 and in light of a statute which this Court knows very
22 well that allows for nationwide service of process, et
23 cetera, we had all kinds of venue issues and
24 jurisdictional issues early on in this litigation, on
25 multiple occasions, but to suggest that they can now

1 hide behind these red-herrings when the Weiss court, as
2 we cited in, I think it was page 19 of our brief, and as
3 Judge Lagueux had indicated on several occasions, the
4 payment of terrorism judgments serves a vital national
5 interest. That's what the Weiss court said. Judge
6 Lagueux made similar kinds of statements about this
7 judgment, and that vital national interest is not being
8 served.

9 Mr. Hibey is fond of quoting a letter that he did not
10 submit to the Court from Condoleezza Rice in January of
11 2007. It said a few things in it, but one thing that
12 letter said in January of 2007 to the President of the
13 Palestinian Authority, and to the Chairman of the PLO,
14 Mr. Abbas, it said virtually verbatim: This judgment is
15 final. It's enforceable. And you either have to pay it
16 or come to terms with the Ungars. And nothing has
17 changed in the last three years. The U.S. Government,
18 the Israeli Government, all these government interests,
19 we heard that for years. Nothing has changed,
20 post-judgment, other than to suggest that two years
21 after the judgment the executive, the president,
22 secretary of state, rather, has told these defendants,
23 pay the judgment because it's enforceable, and yet they
24 come to court, and again are saying that they're not
25 willing to pay it. Never once, in all the statements

1 about my clients, how horrible they are, and the lawyers
2 are in league together, and what horrible people,
3 everyone's horrible, but they're the ones who haven't
4 honored what the Court ordered to be done five and a
5 half years ago, all at the same time attempting to
6 obtain a stay from your Honor, and through a back door
7 that is not permitted, either through Rule 60, through
8 the cases, or any other manner, and would violate Judge
9 Lagueux's ruling that if they wanted a stay early on
10 prior to the First Circuit upholding the judgment, which
11 it did in, I believe it was March of 2005, they could
12 submit a bond, which they did not do. Thank you.

13 THE COURT: All right, thank you, Mr. Strachman.
14 Mr. Hibey, I'm not looking for additional argument but
15 Mr. Strachman just took ten minutes. If you want ten
16 minutes, I'll give you ten minutes, but if you choose
17 not to, I'm not going to infer that that means his
18 arguments are unanswerable and simply decided to rest on
19 what you've already said.

20 MR. HIBEY: I appreciate that, your Honor. I
21 won't take up any more of the Court's time. I think
22 you've listened to me very carefully and I'm grateful
23 for that.

24 THE COURT: All right, thank you. Mr. Strachman,
25 I do have one question. Your motion, as I recall, asks

1 for the Court to act by February 10th, and I'd like you
2 to tell me why that action is necessary by that date.
3 I'm sure you'd prefer it as soon as possible, but I
4 think I recall seeing some reference to February 10th,
5 and I think when I saw it, I wasn't fully sure of the
6 reason why that date was being selected. It may have
7 related to the fact that that's the date by which you
8 think the amount being held in the Israeli treasury will
9 equal the amount of the judgment?

10 MR. STRACHMAN: I believe so, your Honor. In
11 other words, I believe that that's how to calculate what
12 the amount would be. Obviously there's an issue with
13 change in currency values, but on page 1 of our motion
14 we ask that the Court enter an order before February 1.
15 The Court knows, without having to say yet again how
16 long this case has endured, lasted, and we believe that
17 it's ripe now for decision on this issue, and the
18 payment, and that the transfer that would be made in
19 February, the 1st day of the month in February, the
20 Court makes an order and then they obtain the funds and
21 then we release the funds by mid February, we would
22 finally bring some closure to this matter.

23 THE COURT: Thank you, Mr. Strachman. I misspoke
24 when I said February 10th. It's February 1st that's
25 actually stated.

1 I'll certainly try to render a decision as soon as
2 possible. I do have a matter already in progress that's
3 going to take some time, but I will try to immediately
4 thereafter turn my attention to this case. I thank the
5 attorneys for their arguments. The Court will stand in
6 recess.

7 (RECESS)

C E R T I F I C A T I O N

I, court approved transcriber, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.

/sJOSEPH A. FONTES/

COURT REPORTER

JANUARY 16, 2010

DATE